IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6072 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NARESHBHAI MOTIBHAI BAHIL MAJIRANA

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR HN SOMPURA, AGP for Respondent Nos.1, 2, 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 10/08/2000

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 20-5-2000 passed by the District Magistrate, Banaskantha at Palanpr and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, petitioner has been detained based on the two offences alleged to have been registered him and last offence was registered on 26-4-2000. He has relied upon the statements of four independent witnesses whose identity has not been disclosed by the detaining authority. Out of four, two statements have been recorded on 23-4-2000 and two have been recorded on 7-5-2000 and they have been verified by Dy.S.P., Palanpur on 15-5-2000 and, therefore, right of the petitioner under Article 22(5) of the Constitution of India of making an effective representation has been affected. As per the argument of the learned counsel for the petitioner, this is not a verification in the eye of law as it has not been verified by the detaining authority. In support of this contention, learned counsel for the petitioner has relied upon a decision reported in 1996(1) G.L.H. 300 in the case of Jakirbhai Rahimbhai Nagori Vs. District Magistrate, Mehsana and Others wherein at head note the Court has held as under:

> "Claim of privilege by the detaining authority in respect of statements of witnesses-The Superintendent of Police, who examined the statements at the instance of detaining authority wrote below every statement one word `verified'--Held that claim of privilege made by the detaining authority on the basis of such endorsement was not genuine--Continued detention illegal--Observations of Division Bench in the case of Koli Ashwin Vs. State of Gujarat in Special Criminal Application No.1812 of 1993 relied on".

4. It appears that the statements of witnesses have been verified by the Dy.S.P., Palanpur and not by the detaining authority and, hence, the right of the petitioner under Article 22(5) of the Constitution of making an effective representation has been affected. In view of the above discussion, order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other

points.

5. The petition is allowed. The impugned order of detention dated 20-5-2000 passed against the detenu is hereby quashed and set aside. The detenu-Nareshbhai Motibhai Bhil Majirana is set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute with no order as to costs.

(R.P.DHOLAKIA,J.)
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